

NEW APPLICATION  
ORIGINAL



0000101282

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

2009 JUL 22 1 A 10: 07

AT CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JUL 22 2009

DOCKETED BY

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In the matter of:

THOMAS ANTHONY LABRY, doing  
business as IRON HORSE PETROLEUM,  
INC., a suspended Oklahoma corporation,  
and JANE DOE LABRY, husband and wife,

Respondent.

DOCKET NO. S-20691A-09-0365

NOTICE OF OPPORTUNITY FOR HEARING  
REGARDING PROPOSED ORDER TO  
CEASE AND DESIST, ORDER FOR  
RESTITUTION, ORDER FOR  
ADMINISTRATIVE PENALTIES AND FOR  
OTHER AFFIRMATIVE ACTION

**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondent THOMAS ANTHONY LABRY, a married man doing business as IRON HORSE PETROLEUM, INC., a suspended Oklahoma corporation, has engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

**I.**

**JURISDICTION**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

**II.**

**RESPONDENTS**

2. Respondent THOMAS ANTHONY LABRY ("LABRY") is a married man who at all times relevant resided in Newport Beach, California. At all times relevant, LABRY conducted

1 business in his individual capacity, and as IRON HORSE PETROLEUM, INC. LABRY has not  
2 been registered as a securities salesman or dealer by the Division.

3 3. IRON HORSE PETROLEUM, INC. ("IRON HORSE PETROLEUM") is a  
4 suspended Oklahoma corporation that at all times relevant maintained a principal place of business  
5 in Newport Beach, California. According to the records of the Oklahoma Secretary of State and Tax  
6 Commission, IRON HORSE PETROLEUM was formed as an Oklahoma corporation on May 17,  
7 1993. At all times relevant, LABRY served as IRON HORSE PETROLEUM's owner, president  
8 and statutory agent until its corporate status was suspended by the Oklahoma Tax Commission on  
9 August 4, 2006 for non-payment of its franchise tax under 68 Okl. St. Ann. § 1212. IRON HORSE  
10 PETROLEUM has not been registered as a securities salesman or dealer by the Division.

11 4. Respondent JANE DOE LABRY ("SPOUSE") was at all times relevant the spouse  
12 of LABRY. SPOUSE is joined in this action under A.R.S. § 44-2031(C) solely for the purpose of  
13 determining the liability of the marital community.

14 5. At all times relevant, LABRY was acting for his own benefit and for the benefit or in  
15 furtherance of LABRY and SPOUSE's marital community.

### 16 III.

### 17 FACTS

18 6. On or about September 17, 2008, LABRY offered to sell unregistered securities to  
19 at least one Arizona resident in the form of investment contracts and/or fractional undivided  
20 interests in oil and gas.

21 7. At this time, LABRY caused an unsolicited telephone message to be left on voice  
22 mail of the Arizona resident regarding a, "great investment opportunity" (the "Solicitation"). Prior  
23 to the Solicitation, the Arizona resident was unaware of LABRY and IRON HORSE  
24 PETROLEUM, and their business operations.

25 8. When the Arizona resident returned the Solicitation phone call as instructed, he  
26 spoke to a man who represented that the investment pertained to working interests in Oklahoma oil

1 wells that provided "safe" returns of twenty to twenty-five percent per year. The man offered and,  
2 in fact, sent the Arizona resident investment solicitation materials regarding oil investments to his  
3 home in Arizona.

4 9. These investment solicitation materials include: (a) a twelve-page, spiral bound,  
5 glossy and color brochure titled, "IRON HORSE PETROLEUM" (the "Brochure"); (b) a seven-  
6 page IRON HORSE PETROLEUM "Subscription Agreement" regarding investments in the  
7 "Walters Field Priddy Sand Unit Development Program" (the "Subscription Agreement"); and (c) a  
8 single-page, color document titled "Iron Horse Petroleum Cotton County, Oklahoma Monthly  
9 Projections" (the "Monthly Unit Projections").

10 10. The Brochure includes detailed photographs of working oil wells, maps and  
11 geographical diagrams, and states that IRON HORSE PETROLEUM, "is an independent energy  
12 company engaged in the acquisition, development, exploration, production and marketing of  
13 natural gas and crude oil."

14 11. The Brochure states that IRON HORSE PETROLEUM is seeking investors to assist  
15 in the development of forty-one oil and support wells sited on the "Walters Field Priddy Sand  
16 Unit" ("WFP") project in Cotton County, Oklahoma. The Brochure states that the WFP contains  
17 1,800,000 barrels of proven oil reserves, and nine equipped oil wells producing 527 barrels of oil  
18 per day.

19 12. The Brochure and Subscription Agreement state that IRON HORSE PETROLEUM  
20 is offering 100 WFP Unit Investments costing \$25,000 each, for a total offering of \$2,500,000 (the  
21 "WFP Unit Investment(s)").

22 13. The Monthly Unit Projections state that each WFP Unit Investment represents a .75  
23 percent working interest in the entire WFP project. The Monthly Unit Projections further state that  
24 if IRON HORSE PETROLEUM produces, for instance, 1,000 barrels of oil per day via the WFP  
25 project, an investor would earn \$13,162 per WFP Unit Investment, per month.  
26

1           14.     The Brochure further states that the WFP Unit Investments provide investors with  
2 tax benefits, including the fact that: (a) fifty to seventy-five percent of an investment can be  
3 "written off" or deducted from a tax liability for "intangible" drilling costs during the first year of  
4 the investment; (b) lease, drilling equipment and development costs can be deducted from taxable  
5 income as cost depletion or depreciation over a period of five to seven years; and (c) a tax incentive  
6 known as the "Small Producer's Exemption" or "Percentage Depletion Allowance" allows  
7 approximately fifteen percent of an investor's net investment income to be, "TAX FREE."

8           15.     The WFP Unit Investment solicitation materials state that IRON HORSE  
9 PETROLEUM manages all aspects of the investments, and will use investor money for the: (a)  
10 procurement and management of land and oil equipment leases; (b) operation and maintenance of  
11 nine existing and producing oil wells, one water supply well and eight water injection wells; (c)  
12 repair and "rework" of eighteen existing oil wells for production; (d) construction of five new oil  
13 wells at future drilling sites on the WFP; and (e) the storing, transportation, marketing and selling  
14 of the WFP project oil to third parties. The Brochure emphasizes that the success of the WFP  
15 project and related WFP Unit Investments will primarily depend on IRON HORSE  
16 PETROLEUM's superior knowledge and understanding of oil exploration techniques and  
17 strategies. The Brochure further states that a WFP Unit Investment is "NOT a partnership," with  
18 IRON HORSE PETROLEUM.

19           16.     The Arizona resident could have purchased WFP Unit Investments by completing  
20 and signing the Subscription Agreement, and mailing the Subscription Agreement and investment  
21 money to IRON HORSE PETROLEUM at a private post office box in Newport Beach, California  
22 rented and controlled by LABRY.

23           17.     The Brochure and Subscription Agreement disclose that the WFP Unit Investments  
24 are not registered with or "approved" by the S.E.C. However, the WFP Unit Investment  
25 solicitation materials discussed above fail to further disclose that both LABRY and IRON HORSE  
26 PETROLEUM were respondents in previous securities enforcement proceedings filed against them

1 by four other state securities regulatory agencies for improperly offering and/or selling the  
2 unregistered WFP Unit Investments while not being registered as securities salesman or dealers, or  
3 exempt from registration. For instance:

4       A.     On August 25, 2000, the Illinois Securities Department issued a "Consent Order of  
5               Prohibition" to IRON HORSE PETROLEUM for its offer and/or sale to an Illinois  
6               resident WFP Unit Investments that were neither registered, nor exempt from  
7               registration, in violation of the Illinois Securities Law of 1953 (*See, Ill.*  
8               Administrative File No. 000059) (the "Illinois Enforcement Order").

9       B.     On September 26, 2000, the Pennsylvania Securities Commission ("PSC") issued a  
10              "Summary Order to Cease and Desist" against LABRY and IRON HORSE  
11              PETROLEUM for offering to at least one Pennsylvania resident securities in the  
12              form of "fractionalized working interests in the Walters Field Priddy Sand Unit  
13              Development Program (Units) to drill oil and gas wells in West Cotton County,  
14              Oklahoma," that were neither registered, nor exempt from registration, and while  
15              not being registered as securities dealers or salesman in violation of the  
16              Pennsylvania Securities Act (*See, In re Iron Horse Petroleum, Thomas Labry, et al.,*  
17              Administrative Docket No. 0009-11) (the "Pennsylvania Enforcement Order"). The  
18              Pennsylvania Enforcement Order further finds that LABRY and IRON HORSE  
19              PETROLEUM violated the Pennsylvania Securities Act by filing a statement with  
20              the PSC that falsely represented that they would employ only registered securities  
21              sales agents to offer and sell the WFP Unit Investments.

22       C.     On January 9, 2001, the Division of Securities of the Wisconsin Department of  
23              Financial Institutions ("WSD") issued a "Petition for Order" against both LABRY  
24              and IRON HORSE PETROLEUM for offering a Wisconsin resident securities in  
25              the form of "certificates of interest or participation in oil, gas or mineral  
26              lease...units in 'The Walter Field-Priddy Sand Unit Development Program,'" that

1           were neither registered, nor exempt from registration, and while not being registered  
2           as securities salesman or dealers in violation of the Wisconsin Uniform Securities  
3           Law. (*See, In re Iron Horse Petroleum, Inc., Thomas A. Labry, et al.*, File No. S-  
4           00073(EX)). On January 9, 2001, the WSD issued Summary Orders of Prohibition  
5           against both LABRY and IRON HORSE PETROLEUM preventing them from  
6           further offering or selling the unregistered WFP Unit Investments while not  
7           registered as securities salesman or dealers or exempt from registration (the  
8           “Wisconsin Enforcement Orders”).

9           D.    On April 17, 2003, the Alabama Securities Commission issued a “Cease and Desist  
10           Order” against LABRY and IRON HORSE PETROLEUM for their conduct in  
11           offering and/or selling to Alabama residents securities in the form of “investment  
12           contracts involving interests in the Walters Field Priddy Sand Unit Development  
13           Program [sic] a gas and oil drilling program of IRON HORSE,” that were neither  
14           registered, nor exempt from registration, in violation of the Alabama Securities Act.  
15           (*See, In re Labry, Iron Horse Petroleum, Inc., et al.*, Administrative Docket No.  
16           CD-2003-0009) (the “Alabama Enforcement Order”).

17           18.   The WFP Unit Investment Brochure discloses that the investments “may involve a  
18           high degree of risk.” However, the WFP Unit Investment solicitation materials discussed above do  
19           not further disclose that LABRY and IRON HORSE PETROLEUM were defendants in a federal  
20           civil fraud lawsuit filed by Colorado investors who purchased WFP Unit Investments from  
21           LABRY and IRON HORSE PETROLEUM. (*See, Burba v. Thomas A. Labry and Iron Horse*  
22           *Petroleum, Inc.*, 8:04-CV-01098-JVS-VBK (U.S. District Court, Central District of California).

23           19.   The Colorado WFP Unit Investment investors asserted claims against LABRY and  
24           IRON HORSE PETROLEUM for, among other things, intentional fraud, conversion and a claim  
25           under the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1961, et seq.) for: (a)  
26           misrepresenting that IRON HORSE PETROLEUM was an active Oklahoma corporation in good

1 standing and actively engaged and conducting oil business in California and Oklahoma; (b) failing  
2 to disclose the existence of the securities enforcement orders discussed above; (c) misrepresenting  
3 that IRON HORSE PETROLEUM was financially sound and adequately capitalized and  
4 maintained adequate levels corporate control and due diligence; and (d) misrepresenting that IRON  
5 HORSE PETROLEUM would use investor money solely for oil exploration and production  
6 operations.

7 20. Although both LABRY and IRON HORSE PETROLEUM defended the federal  
8 civil fraud lawsuit, on April 5, 2006, the Colorado investors obtained a final Order and Judgment  
9 against both LABRY and IRON HORSE PETROLEUM on all of their claims totaling \$647,776.30  
10 (the "Civil Fraud Judgment"). To date, no money has been collected by the Colorado WFP Unit  
11 Investment investors on their Civil Fraud Judgment.

12 **IV.**

13 **VIOLATION OF A.R.S. § 44-1841**

14 **(Offer or Sale of Unregistered Securities)**

15 21. In or about September 2008, LABRY offered or sold securities in the form of  
16 investment contracts and/or fractional undivided interests in oil and gas, within or from Arizona.

17 22. The securities referred to above were not registered pursuant to Articles 6 or 7 of the  
18 Securities Act.

19 23. This conduct violates A.R.S. § 44-1841.

20 **V.**

21 **VIOLATION OF A.R.S. § 44-1842**

22 **(Transactions by Unregistered Dealers or Salesmen)**

23 24. LABRY offered or sold securities within or from Arizona while not registered as a  
24 dealer or salesman pursuant to Article 9 of the Securities Act.

25 25. This conduct violates A.R.S. § 44-1842.

## VI.

## VIOLATION OF A.R.S. § 44-1991

## (Fraud in Connection with the Offer or Sale of Securities)

26. In connection with the offer or sale of securities within or from Arizona, LABRY directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. LABRY's conduct includes, but is not limited to, the following:

- A. Disclosing to the potential Arizona investor that the WFP Unit Investments are not registered with, or approved by the S.E.C., but failing to further disclose the fact that both LABRY and IRON HORSE PETROLEUM are subject to the Illinois, Pennsylvania, Wisconsin and Alabama Enforcement Orders discussed above for their improper conduct in selling the unregistered WFP Unit Investments while not being registered as securities salesman or dealers or exempt from registration; and
- B. Disclosing to the potential Arizona investor that the WFP Unit Investments involve risk, while further failing to disclose that both LABRY and IRON HORSE PETROLEUM were defendants in a federal civil fraud case filed against them for selling the WFP Unit Investments that resulted in an the unsatisfied Civil Fraud Judgment against them totaling \$647,776.30.

27. This conduct violates A.R.S. § 44-1991.

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VII.

### REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order LABRY to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;
2. Order LABRY to take affirmative action to correct the conditions resulting from his acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
3. Order LABRY to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
4. Order that the marital community of LABRY and SPOUSE be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and
5. Order any other relief that the Commission deems appropriate.

## VIII.

## HEARING OPPORTUNITY

LABRY and SPOUSE may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If LABRY or SPOUSE requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the

parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov). Requests should be made as early as possible to allow time to arrange the accommodation.

## IX.

### ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if LABRY or SPOUSE request a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

Additionally, the answering respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007, addressed to Mike Dailey.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering respondent or respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

1 The officer presiding over the hearing may grant relief from the requirement to file an  
2 Answer for good cause shown.

3 Dated this 22 day of July, 2009.

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6 Matthew J. Neubert  
7 Director of Securities  
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